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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,020	03/01/2004	Thomas Walton McNutt	P0316	1280

7590 11/03/2004
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EXAMINER

STORMER, RUSSELL D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,020

Applicant(s)

MCNUTT ET AL.

Examiner

Russell D. Stormer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration believes the named inventors to be the original, first, and *joint* inventors of the subject matter which is claimed and for which a patent is sought.

Although two inventors are named, the declaration states in line 3 that there is only one original, first, and sole inventor.

Drawings

2. The drawings are objected to because figure 10, as described in the Brief description of the invention, has not been included in the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

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Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities:

The status of the 10/313877 application referred to in the first paragraph should be updated.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 5-9 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The "traction member" in each of claims 5 and 16 lacks antecedent basis.

In claims 8 and 19 the "cork element" lacks antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

6. Claims 1-3, and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore.

The traction grousers 24 are mounted to the track by a selectively releasable mechanical attachment assembly 33 in what are considered to be clean-out holes 22.

7. Claims 1-4 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Wadsworth et al.

The traction grousers are mounted to the tracks in clean-out holes by selectively releasable mechanical attachment members as shown in figures 2, 3, 4, and 5.

8. Claims 1, 2, 3, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Stedman.

The grousers 18 are mounted to the tracks by selectively releasable fasteners 24, 25 through holes in the track which can be used as clean-out holes.

9. Claims 1, 5, 10, and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Julseth.

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10. Claims 1-20 are rejected under 35 U.S.C. 102(f) because the applicants did not invent the claimed subject matter.

The declaration of the parent application 10/679003 names four joint inventors: Thomas McNutt, Darby McNutt, Steven Wolleat, and Paul Bache.

The declaration of the instant application names only two inventors: Thomas Walton McNutt and Darby O'Gill McNutt. It is not entirely clear if these are the same McNutts named in the declaration of the parent application.

Applicants have provided no explanation of why two of the original inventors of the subject matter of the parent application are not included in the instant application. Applicant has not provided a statement explaining in detail which subject matter was invented by which of the inventors; or shown or described any errors which may have occurred in the parent application which caused two of the inventors to inadvertently and erroneously be named as inventors; or provided evidence that the instant application, which is a CIP of the parent application, now claims only subject matter which was invented solely by the remaining two inventors named in the instant declaration. It should be noted that the claims 1-20 of the instant application are identical to the claims in the originally filed parent application in which all four inventors were named as joint inventors.

Accordingly, it appears that at least some of the subject matter of the instant claimed invention was invented by Steven Wolleat and Paul Bache, who are no longer included as inventors in this CIP application.

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Because the full names in the instant declaration are different from the names in the original application, Applicant must further confirm that the two inventors named in the instant application are indeed the same two persons of the original four inventors named in the parent application.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julseth in view of Rollinson.

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For the raised traction elements of Julseth to be in the form of a chevron shape would have been obvious as taught by Rollinson as such a chevron shape is well-known in the art to provide exceptional traction both longitudinally and laterally.

14. Claims 1-4, 7, 8, 10-14, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs et al in view of Guha et al.

The grouser members of Boggs et al include a traction member 20 and a mounting plate 23, and securing members (bolts, unlabelled) which extend through clean-out holes in the track. The traction member 20 does not include a cork member or cork element.

Guha et al teaches the use of cork in a traction member as a filler for the member. See lines 3-13 of column 5. From this teaching it would have been obvious to use cork in the traction member 20 of Boggs et al in order to lighten the member or function as a filler. The traction member would then comprise a cork member.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other traction members.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-3768. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10/29/04


RUSSELL D. STORMER
PRIMARY EXAMINER 10/29/04